HIGH COURT OF UTTARANCHAL AT NAINITAL.

Second Appeal No. 1344 of 2001

State of U.P. now State of Uttaranchal,
Through the Collector, Almora
And another ... Appellants

Vs.

Kharak Singh Mehra S/o Sri Chandra Singh Mehra,
R/o Dhaulchhina, Patti- Malla Lakhanpur,
Tehsil & District- Almora. .. Respondents

Hon'ble P.C.Verma, J.

This second appeal has been filed against the judgment and decree dated 27.06.2000 passed by the District Judge, Almora in civil Appeal No. 15 of 1999, by which appeal of the appellant/respondent in this writ petition was partly allowed.

Brief facts giving rise to the present second appeal are that the respondent/plaintiff filed a suit for the award of Rs. 1,50,240/- plus Rs. 5,000/- as the amount of interest in the court of Civil Judge, (Sr. Div.) Almora stating therein that he has established a Lisa Factory in 1980. The Lisa was received by the factory from the auction-sale made by the Forest Department, which was being purchased regularly from 1982 to 1986 for manufacturing of Biroja, turpentine oil and varnish. The plaintiff got himself registered with the Forest Department for purchase of Lisa snits use. The Forest Department was not renewing his registration after 1986. The plaintiff had purchased 68 quintals of Lise from Garkhet Range and brought the Lisa in the factory. When the Department refused to register the factory for preparation of its manufacturing, approximately 67 quintals 20 Kgs. Of Lisa was kept lying in the factory

premises. Besides this, there were 21 quintals 60 Kg. of Biroja, 1200Litres of Turpentine oil and 600 liters of varnish was kept in the factory. On 12.06.1990, in the absence of the plaintiff and without the permission of the plaintiff the officers and officials of the Forest Department confiscated Lisa, Biroja, turpentine oil and varnish and damaged the residential portion inside the factory. In spite of repeated requests of the plaintiff, they had not returned confiscated articles. Therefore, a notice was given to them but they paid no heed. The Department had cause the damage to the tune of Rs. 1,50,000/-. The plaintiff has also suffered the mental agony which has been valued at Rs. 5,000/-. The plaintiff has also claimed interest @ 10%. The defendant/appellant contested the suit and field its written statement in the court below in which they submitted that the plaintiff had no authority or registration for the manufacturing of turpentine oil, Broja from Lisa; that the officers of the Department are authorised to make search and confiscate the articles which have been kept against the law; that no damage was caused to the residential portion; that the plaintiff factory was registered under Sec. 10 of the Forest Act for the manufacture of varnish from Biroja upto 24.07.1981; since in the year 1982 the distillation plant was found there for which no registration, therefore, the registration was refused; that again in the year 1982 illegality was committed by the plaintiff, therefore, the registration was cancelled; that the plaintiff had no right to manufacture turpentine oil from Lisa or convert the Lisa into Biroja or to manufacture varnish from Lisa, therefore, in view of Section 16 of the Act, the registration of the plaintiff's unit was cancelled; that the plaintiff had purchased

132.45 qtls. Of Lisa in the year; that when the Divisional Forest Officer visited on 16.08.1987, 646 tins of Lisa and 3 drums of varnish was found whereas there should have been 729 tins, which is equal of 132.45 quintals of Lisa, therefore, the possession of this Lisa was illegal. It was denied that the plaintiff had purchased 21 quintals 60 Kgs. Of Biroja and 1200 Litres of turpentine oil from Haldwani. The plaintiff had kept 600 Litres of varnish. These articles could not be purchased without the permit from the Forest Range Officer. The quantity of articles, which was found in possession of the plaintiff, were in contravention of Section 14 of the Forest Act 1927, therefore the Forest Officer had every right to confiscate the articles. The plaintiff was using kerosene oil for the manufacture of varnish. The plaintiff had not obtained any permission for transporting varnish and turpentine oil from Haldwani, which is a mandatory provision under Section 4(2) of the Forest Act. The suit is liable to the dismissed.

After framing of issues the trial court adduced evidence, oral as well as documentary, of the parties and after hearing learned counsel for both the parties the trial court decreed the suit. Aggrieved with the judgment and order, the defendants/ petitioners have preferred the appeal No. 15 of 1999. The Appellate Court/ District Judge, Almora has partly allowed the appeal and modified the order of the trial court. Hence this Second Appeal.

Heard learned Standing Counsel for the appellants and Sri. B.D. Upadhyay, learned counsel for the respondent.

I have perused the judgment and order passed by the trial court as well as the Appellate Court. A perusal of

the judgment of the trial court shows that the trial court has decreed the suit with the observations that the plaintiff is entitled to recovery of Rs. 1,52,240/- with 6% interest on the decretal amount from the defendant. The Appellate Court/ District Judge, Almora has partly allowed the appeal preferred by the appellants and modified the order of the trial court to the extent that plaintiff is entitled to receive back Rs. 91,500/- from the Department with 6% interest thereon from the date of the suit till payment. Claim of the plaintiff/defendant for rest of the amount was rejected. I find no infirmity and illegality in the order impugned. Both the Courts below have recorded finding of facts. No substantial question of law arises for determination in this Second Appeal.

Accordingly, the second appeal is dismissed. No order as to costs.

(P.C. Verma, J.)

December 11,2003:
NCM: